

LAW OFFICE OF DANIEL BERKO
DANIEL BERKO, State Bar No. 94912
819 Eddy Street
San Francisco, CA 94109
Tel: 415.771.6174
Fax: 415.474.3748
E-mail: daniel@berkolaw.com

Attorney for Defendant, DAVID KLEIN

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JELLY BELLY CANDY COMPANY,

Plaintiff,

-vs-

DAVID KLEIN,

Defendant.

Case No. 2:22-cv-01509-KHM-JDP

DEFENDANT DAVID KLEIN'S ANSWER
TO COMPLAINT

Defendant DAVID KLEIN ("Defendant" or "KLEIN") answers the Complaint filed herein by admitting, denying and alleging as follows:

In responding to Paragraph 1, to the extent paragraph 1 is intended to have any factual representations, defendant denies each and every allegation therein.

In responding to Paragraph 2, Defendant admits paragraph 2.

In responding to Paragraph 3, Defendant resides in Anthony, Florida and not Ocala Florida as alleged in the complaint.

In responding to Paragraph 4, Defendant denies that the amount in controversy exceeds \$75,000, but admits that the action is between citizens of different states.

In responding to Paragraph 5, Defendant denies paragraph 5 and specifically denies that this action arises from his contacts with California and therefore denies this paragraph in full.

1 In responding to Paragraph 6, Defendant denies that a substantial part of the events
2 and/or omissions complained about occurred in this judicial district and therefore denies this
3 paragraph 6 in full.

4 In responding to Paragraph 7, Defendant admits paragraph 7.

5 In responding to Paragraph 8, Defendant admits paragraph 8 but notes that he did indeed
6 found his own company called “The Jelly Belly” and that it was a candy company.

7 In responding to Paragraph 9, Defendant admits paragraph 9.

8 In responding to Paragraph 10, Defendant admits paragraph 10

9 In responding to Paragraph 11, Defendant denies paragraph 11.

10 In responding to Paragraph 12, Defendant denies paragraph 12, except that Defendant
11 admits that Plaintiff is not involved in any way with Defendant and that Plaintiff has felt it
12 necessary to make that clear at times. Except as expressly admitted, defendant denies paragraph
13 12.

14 In responding to Paragraph 13, Defendant denies paragraph 13, except that he admits that
15 in 2019 he launched a line of CBD-infused jelly beans. Defendant further admits that Jelly Belly
16 ® had no connection with his launching of the product called Spectrum Jelly Beans. Without
17 limiting the denial of this paragraph as stated, Defendant specifically denies that he ever claimed
18 to be the ‘founder’ of Plaintiff in 2019 or in connection with the marketing campaign described
19 in paragraph 13, or in connection with any marketing campaign.

20 In responding to Paragraph 14, Defendant admits paragraph 14,

21 In responding to Paragraph 15, Defendant lacks sufficient information or belief to admit
22 or deny paragraph 15, and on that basis he denies it. Defendant does admit he is not the founder
23 of Jelly Belly®.

24 In responding to Paragraph 16, Defendant denies paragraph 16.

25 In responding to Paragraph 17, Defendant denies paragraph 17.

26 In responding to Paragraph 18, Defendant lacks sufficient information or belief to admit
27 or deny paragraph 18, and on that basis he denies it.
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1 In responding to Paragraph 19, Defendant admits Jelly Belly issued the press release
2 quoted in paragraph 19. Defendant admits that the Jelly Belly® Candy Company had no
3 affiliation with the Gold Ticket Contest. Defendant admits that the Jelly Belly® Candy
4 Company is not associated with Defendant in any way. Defendant admits that he “came up with
5 the name ‘Jelly Belly’ and other novel marketing ideas” but except for these admissions, denies
6 paragraph 19.

7 In responding to Paragraph 20, Defendant lacks sufficient information or belief to admit
8 or deny paragraph 20, and on that basis he denies it.

9 In responding to Paragraph 21, Defendant lacks sufficient information or belief to admit
10 or deny paragraph 15, and on that basis he denies it, except that Defendant admits that the
11 Washington Post issued what it called a correction that is correctly quoted in paragraph 21.

12 In responding to Paragraph 22, Defendant denies paragraph 22.

13 In responding to Paragraph 23, Defendant admits paragraph 23, except that Defendant
14 alleges the material reason for the filing of the New York Complaint was Jelly Belly® Candy
15 Company’s interference with his ability to refer to himself as the inventor and/or creator of the
16 Jelly Belly ® jelly bean

17 In responding to Paragraph 24, Defendant admits paragraph 24.

18 In responding to Paragraph 25, Defendant admits paragraph 25.

19 In responding to Paragraph 26, Defendant denies paragraph 26.

20 In responding to Paragraph 27, Defendant admits paragraph 27.

21 In responding to Paragraph 28, Defendant denies paragraph 28, except he admits that
22 Jelly Belly® Candy Company accepted service of the New York Complaint and filed a motion
23 to dismiss his claims. Except as expressly admitted, paragraph 28 is denied.

24 In responding to Paragraph 29, Defendant admits that Jelly Belly® Candy Company filed
25 a motion to dismiss and the motion to dismiss alleged the claims and made the arguments
26 asserted in paragraph 29. Except as thus admitted, Defendant denies paragraph 29.

27 In responding to Paragraph 30, Defendant denies paragraph 30 as he did not admit that
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1 the majority of or any of his claims were barred by the statute of limitations and that
2 Massachusetts had no relationship to the claims made in the New York action or that that was
3 the sole reason he sought transfer.

4 In responding to Paragraph 31, this paragraph simply incorporates earlier claims made in
5 Jelly Belly® Candy Company's complaint and no response is required for that reason. To the
6 extent any allegations are deemed repeated, or a response is needed, Defendant reasserts his
7 responses including, in particular, his denials to the paragraphs as stated above.

8 In responding to Paragraph 32, Defendant denies paragraph 32 because his allegation that
9 he has been defamed by Jelly Belly® Candy Company, and had his economic advantages having
10 been diminished was, at the time the New York complaint was filed, based on the March 31,
11 2022 email that he received from Newswire which is quoted in the New York complaint at
12 Document 1-2, page 5. That claim did not involve a claim that he was defamed by not being
13 allowed to state he was the founder of the Jelly Belly® Candy Company but rather that he was
14 not allowed to state that he was the "original inventor and founder of the Jelly Belly® jelly
15 bean" even though that is a true statement admitted as such by Plaintiff. To the extent that the
16 complaint alleged that Defendant was the original founder of plaintiff the Jelly Belly® Candy
17 Company, that was not intended and is an error. Defendant further alleges that he was the
18 creator of the name Jelly Belly® jelly bean and other novel marketing ideas to promote the Jelly
19 Belly ® Jelly Bean and it was through his efforts, as further described in this answer, that a great
20 success was made out of the creation of the Jelly Belly® Jelly Bean. Defendant denies that the
21 complaint alleged three defamatory statements, but rather two (the Washington Post and
22 Refinery 29 statement). Defendant admits that those two statements are not defamatory. The
23 third instance complained of in the New York complaint was Newswire's refusal to allow
24 Defendant to truthfully state he was the inventor or creator of the Jelly Belly ® jelly bean which
25 at the time of the New York Complaint was filed, was based on the March 31, 2022 email from
26 Newswire.
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1 In responding to Paragraph 34, Defendant denies there is an ongoing controversy
2 “concerning whether Defendant is the ‘founder’ of the Jelly Belly® Candy Company, formerly
3 known as the Herman Goelitz Candy Company.” Defendant does not now and never has
4 claimed he is the ‘founder’ of the Jelly Belly Candy Company, formerly known as the Herman
5 Goelitz Candy Company.”

6 In responding to Paragraph 35, Defendant admits paragraph 35.

7 **AFFIRMATIVE DEFENSES**

8 Without assuming any burden that they would not otherwise bear, Defendant further
9 asserts the separate and distinct affirmative defenses stated below to each and every cause of
10 action alleged in the Complaint except where such affirmative defense states that it is
11 specifically limited to one or more causes of action:

12 FIRST AMENDMENT

13 As a first, separate and distinct affirmative defense, Defendant’s conduct alleged in the
14 complaint was protected by his rights under the First Amendment of the United States
15 Constitution.

16 STATUTE OF LIMITATIONS

17 As a second, separate and distinct affirmative defense, the complaint is barred by the
18 Statute of Limitations CCP §3339 (1).

19 LACHES

20 As a third, separate and distinct affirmative defense, Defendant alleges that the complaint
21 is barred by laches.

22 ADEQUATE REMEDY AT LAW

23 As a fourth, separate and distinct affirmative defense, Defendant alleges that plaintiff has
24 an adequate remedy at law.

25 UNCLEAN HANDS

26 As a fifth, separate and distinct affirmative defense, Defendant alleges any recovery by
27 Plaintiff is barred by its own improper conduct or “unclean hands”, including conduct that
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1 caused or contributed to the damages Plaintiff alleges.

2 COMPLAINT IS MOOT

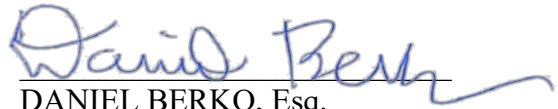
3 As a sixth, separate and distinct affirmative defense, Defendant alleges that the
4 Complaint is moot.

5 Defendant reserves the right to assert any and all additional affirmative defenses that
6 discovery or other evidence may reveal to be appropriate. Defendant further reserves the right to
7 amend his Answer or otherwise plead in response to Plaintiff's Complaint, and to file such other
8 Motions as it may deem advisable in defense of the case or as warranted by information adduced
9 through the discovery process.

10 WHEREFORE, said Defendant prays as follows:

- 11 1. That the action be dismissed with prejudice;
12 2. That the request for injunctive relief be denied and Plaintiff take nothing by this action;
13 3. That Defendant recover his costs of suit incurred herein, including attorneys' fees; and
14 4. For such other and further relief as the Court deems proper and just.

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16 Dated: June 1, 2023

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18 DANIEL BERKO, Esq.
19 Attorney for Defendant DAVID KLEIN
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CERTIFICATE OF SERVICE

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF CALIFORNIA

On June 1, 2023, I served the foregoing documents described as

ANSWER TO COMPLAINT

on all interested parties as stated below:

I HEREBY CERTIFY THAT ON JUNE 1, 2023, A COPY OF FOREGOING NOTICE OF APPEARANCE WAS FILED ELECTRONICALLY [AND SERVED BY MAIL ON ANYONE UNABLE TO ACCEPT ELECTRONIC FILING].

NOTICE OF THIS FILING WILL BE SENT BY E-MAIL TO ALL PARTIES BY OPERATION OF THE COURT'S ELECTRONIC FILING SYSTEM [OR BY MAIL TO ANYONE UNABLE TO ACCEPT ELECTRONIC FILING]. PARTIES MAY ACCESS THIS FILING THROUGH THE COURT'S SYSTEM.

DATED JUNE 1, 2023.


CINE JOHNSON